BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of the California High- Speed Rail Authority to construct an overhead grade separation at Avenue 17 over BNSFs existing track (MP 1021.42); and proposed high-speed tracks (MP 168.67) within Madera County, California.	Application 26-03-016

OPENING BRIEF OF THE RAIL SAFETY DIVISION

I. INTRODUCTION

Application (A.)26-03-016 of California High Speed Rail Authority's (CHSRA) seeks California Public Utilities Commission (Commission/CPUC) approval to construct grade separated overhead highway-rail crossing(s) at Avenue 17 over BNSF Railway (BNSF) existing track (MP 1021.42) and proposed high-speed tracks (MP 168.67) in the County of Madera.

Pursuant to Administrative Law Judge (ALJ) Andrea McGary's ruling (Ruling) of October 26, 2026, authorizing party briefing regarding CHSRA's August 20, 2026, oral on the record statements during the Prehearing Conference, and CHSRA's October 1, 2026, and October 16, 2026, filed documents in support of its proffer that it could "assume risk" and move forward with construction of the subject rail crossing(s) without first obtaining Commission approval and authority to construct.[1]

The Rail Safety Division (RSD) of the Commission hereby submits this Opening Brief.[2]

On February 18, 2026, RSD sent an email to CHSRA with a list of six crossings that had been constructed, without authorization from the Commission. RSD had

[1] Administrative Law Judge Andrea McGary's Ruling (ALJ Ruling) at 1 (October 26, 2026).

[2] ALJ Ruling at 4.

compiled the list after reviewing the alignment of RSD's own accord. That list included the Avenue 17 crossings requested here.

On March 17, 2026, RSD received filed notification of the CHSRA application in this proceeding. RSD reviewed the application and determined that the design complied with CPUC requirements. RSD completed the Highway-Rail Crossing Application Check List which is attached to RSD's Response to the Application of April 23, 2026.[3] It should be noted that CHSRA had not consulted RSD prior to filing its application, and a diagnostic review of the crossing had not been performed. A diagnostic review is typically performed with all relevant stakeholders to discuss the proposed design of the crossing to ensure that any regulatory requirements and safety issues are addressed during the design phase, prior to construction of the crossing.

A.26-03-016 proposes one grade separated highway structure over two separate rail corridors; the existing BNSF Stockton Subdivision and the proposed CHSRA Sierra Subdivision. A.26-03-016 originally provided one United States Department of Transportation Crossing Number (DOT#) as a single crossing over these two Subdivisions; DOT# 968518J. During the Prehearing Conference on August 20,2026, ALJ McGary requested that CHSRA provide a second DOT#. Please note, the DOT# provided by CHSRA in their Amendment filed on October 16, 2026 (DOT# 968553X) has already been issued to another crossing and cannot be assigned at Avenue 17.[4]

A.26-03-016 seeks Commission's approval for the project specifically pursuant to Public Utilities Code Sections 1201 through 1205, inclusive, and in accordance with Rules 3.7 and 3.9 of the Commission's Rules of Practice and Procedure.[5] The application also contains a Proceeding Scoping Memo in which CHSRA designated this proceeding as "Ratesetting" and the CHSRA has attached legal descriptions and project

[3] Response of the Rail Safety Division to the Application (April 23, 2026).

[4] Amended Supplemental Information of California High-Speed Rail Authority Pursuant to the Instruction of ALJ McGary at Prehearing Conference of August 20, 2026, at 3 (October 16, 2026).

[5] Application (A.) 26-03-016 at 3.

plans, among others to the application pursuant to Rules 3.7 and 3.9.[6] This application is part of the normal Commission approval process that CHSRA has engaged in numerous times since 2015 when CHSRA submitted their first application (A.15-10-007) for the Raymond Road Underpass, which is the next crossing just south of Avenue 17.

II. DISCUSSION

A. RSD has no record that it ever advised CHSRA to proceed with the construction of Avenue 17 over the rail corridors without Commission authorization and "assume risk" of such action.

RSD has no record in this proceeding that it advised CHSRA to proceed with construction and "assume risk" during the application process of this project.[7] RSD conducts safety evaluations related to crossing applications as a regulatory entity and does not contract for construction of any CHSRA project.

CHSRA provides two misleading and irrelevant emails from RSD dated March 10, 2025, for CP-1 - McKinley Ave and March 11, 2025, for the Church Avenue crossings. The circumstances surrounding these emails were relegated to CHSRA's request for time extensions for various activities not related to formal proceedings but pursuant to Commission General Order (GO) 88-B. GO 88-B delegates authority to RSD to approve alterations to existing crossings that meet certain criteria, including converting an at-grade crossing into a grade-separated crossing.[8] New crossings are not listed in the scope for GO 88-B and therefore does not apply to the new crossing of Avenue 17 over the CHSRA and BNSF corridors.

RSD reviews the GO 88-B requests covering the alteration and within 45 days from the date of receipt, indicates to the party desiring the change its position as seen in the subject emails.[9]

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[6] Application (A.) 26-03-016, Exhibits A-E.

[7] The term "assume risk" is one of contracts and is mentioned in the Department of Transportation's Construction Manual Sections 4-3003 and 4-3904A (2) as to Caltrans' oversight of its contractors Department of Transportation (Caltrans) 2025 Construction Manual at Sections 4-3003, 4-3904A (2).

[8] General Order (GO) 88-B (January 8, 2004).

[9] GO-88-B Section 4 at 2.

GO 88-B states:

"Where the parties, including the Commission staff, are not in agreement as to the necessity for or extent of the alteration or apportionment of cost of a proposed change in an existing highway-rail crossing, or the proposed alteration is beyond the scope of this General Order, the party desiring the change shall apply to the Commission for authority to make the alteration. The application shall comply with the Commission's Rules of Practice and Procedure (California Code of Regulations, Title 20)."[10]

The RSD emails presented by CHSRA discussed crossing projects that had been authorized by RSD as part of the GO 88-B process but had expired. McKinley Avenue crossing was approved on December 20, 2018, and expired on December 20, 2021. The email presented by CHSRA dated March 10, 2026, from Pablo Vargas (a staff member of RSD) was regarding the fact that a new GO 88-B request would need to be submitted since the previous authorization had expired more than three years earlier. It states that construction could continue since the project had previously been authorized, but that the new GO 88-B could have different requirements that would need to be followed. These statements applied only to projects which are authorized through the GO 88-B process which is entirely within the delegated authority of RSD. The same email discusses a separate project which would require a formal application to the Commission and does not give any indication that CHSRA could proceed "at-risk".

The CHSRA and its construction activities throughout the State are widespread and RSD notes that to date, at least 5 other projects, that RSD is aware of, are ongoing without Commission authorization.

Again, the two emails relied upon by CHSRA, relate to the GO 88-B process at other existing crossings. No reasonable person or entity, in this case CHSRA, would construe that the process pursuant to GO 88-B would have any impact on the formal application process, let alone allow for construction of a crossing before the Commission has authorized it.

[10] GO-88-B at Section 6 at 2.

In addition, it is clear that CHRSA did not intend to file an application for this crossing until they were notified by RSD in February of 2026. RSD first met with CHSRA regarding Avenue 17 on October 23, 2014. The meeting minutes specify what approvals are needed for each type of project, and states that applications could be submitted as early as 2015.[11] However, according to a news release by CHSRA, construction on these crossings began in June 2023 and was completed in October 2025.[12] No explanation was provided by CHSRA as to why RSD was not consulted regarding the design of the crossings or why an application was not filed prior to construction.

B. CHSRA's was aware of its obligation to file an application for any new crossing.

Regarding CHSRA's statement that Public Utilities Code Section 1202 does not specifically provide a statue that "specifically require the Commission's approval to construct a grade-separated crossing when no crossing is in existence or has been established" and that CHSRA was "confronted with an unclear obligation."

Under the California Code of Regulations, Title 20, Division 1, Chapter 1, the Public Utilities Commission's Rules of Practice and Procedure, Rule 3.7 "Public Road Across Railroad" requires that an application be submitted the Commission to construct a public road, highway, or street across a railroad. It does not differentiate between an at-grade crossing or a grade-separated crossing.

Since 2015, CHSRA has submitted over 30 applications to the Commission for authorization for new crossings. The last application filed by CHSRA, prior to this application, was A.23-05-014 filed in 2023, and prior to that, A.21-02-012 was filed in 2021. CHSRA had clear notice of its obligations to file the required applications for Commission approval as seen in Attachment A. There may have been personnel changes and reassignment within CHSRA, and those new personnel may not have been familiar

[11] See Attachment A.

[12] See Attachment B.

with the Commission's requirements, but that is not an excuse to say that there was an unclear obligation. CHSRA personnel are responsible for being familiar with the work that past CHSRA personnel have done for past projects and that includes working with RSD to review new proposed crossings and alterations of existing crossings. CHSRA personnel should also familiarize themselves with conditions of the Commission's authorization under the Ordering Paragraphs of each crossing Decision, as well as the conditions set forth in RSD's authorization of GO 88-B requests, to ensure that all conditions are met, particularly when authorizations need a time extension-which must be submitted at least 30 days before the expiration date.

Throughout the years and up to recently, RSD has been actively reaching out to various CHSRA personnel (and their consultants) to get status on the overall project, where the design is at with various crossings, and whether authorized projects need time extensions. It is CHSRA's responsibility to reach out to and coordinate with RSD to discuss its projects and obtain feedback on the design and guidance from RSD, as well as request time extensions on authorized projects when needed. Had CHSRA been actively coordinating with RSD staff and current CHSRA personnel had "unclear obligations", RSD would have provided the necessary guidance.

C. CHSRA assigned a Crossing Number that has been previously assigned by CHSRA to another crossing.

A.26-03-016 proposes one grade separated highway structure over two separate rail corridors; the existing BNSF Stockton Subdivision and the proposed CHSRA Sierra Subdivision. The tracks between the corridors are over 150 feet apart. When tracks are spaced more than 100 feet apart, it is considered to be two separate corridors as defined by the Federal Railroad Administration (FRA) in their "Guide for Preparing U.S. DOT Crossing Inventory Forms." When a roadway is proposed to go through these two separate corridors, it is considered as two separate crossings, each provided with a unique United States Department of Transportation Crossing Number ("DOT#"). A.26-03-016 originally provided one DOT# for both crossings as a single crossing; DOT# 968518J. During the Prehearing Conference on August 20, 2026, RSD brought this to ALJ

McGary and CHSRA's attention. ALJ McGary then requested that CHSRA provide a separate DOT# for the second crossing.[13]

In the amendment filed by CHSRA on October 16, 2026, CHSRA provided DOT# 968553X. That DOT # has already been assigned to another crossing by CHSRA in A.16-05-016 of May 26, 2016.

As part of that application, CHSRA assigned DOT# 968553X to a private crossing for a maintenance road that ran along a canal located south of State Route (SR) -145. On January 19, 2017, the Commission approved A.16-05-016 under Decision (D.) 17-01-008, memorializing DOT# 968553X to the private maintenance road crossing beneath CHSRA's Sierra Subdivision, located south of SR-145.

In addition, in their Amendment, CHSRA did not specify which number would be assigned to the crossing over the CHSRA corridor, and which number would be assigned to the crossing over the BNSF corridor. It should be noted that DOT#'s are provided by the FRA to a railroad agency for that railroad agency's assignment for crossings in their system. These numbers are usually provided in blocks of consecutive numbers. Since the Avenue 17 crossing is a new crossing over the existing BNSF corridor, CHSRA should coordinate with BNSF to obtain a DOT# that has been provided to BNSF and provide it as part of this application so that it can be assigned to the Avenue 17 crossing over the BNSF corridor.

III. CONCLUSION

RSD has no record that it ever advised CHSRA to proceed with this project prior to this application being approved by the Commission. CHSRA's allegations to the contrary are without merit since any direction to "proceed" was specific to GO-88-B regulations at two locations which were already approved by the Commission in formal crossing application proceedings.

[13] A.26-03-016 Transcript of Prehearing Conference of August 20, 2026, at 17, 20-21, 26, 28-31, 37, Volume 2.

CHSRA needs to coordinate with BNSF to obtain a DOT# provided by FRA to BNSF, to assign to the Avenue 17 crossing over the BNSF corridor.

Lastly, CHSRA should meet with RSD to go over their entire alignment to ensure that all proposed crossings are accounted for, formally authorized by the Commission, and that all crossings are assigned a DOT# appropriately. It is recommended that CHSRA set up regular meetings (quarterly or bi-annually) to keep RSD apprised of the project's progression, design of various crossings along the CHSRA corridor, and to obtain Commission authorization. There are more extensions planned for the CHSRA system beyond what has already been previously discussed with RSD, so constant communication and coordinating is crucial to ensuring that crossings are formally authorized by the Commission and designed and constructed properly.

Respectfully submitted,

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November 6, 2026

Attachment A

CP01 – CPUC Interface
California High Speed Rail Project (CHSRP)

Date: Thursday, October 23, 2014 at 1:30 PM
180 Promenade Circle, Suite #115, Sacramento CA

Meeting Minutes

Introductions

1. Marvin Kennix was introduced as CPUC Utilities Engineer.
2. Raj Mangat and Bobby Pentorali were introduced as CHSRA representatives.
3. Augustine Chung was introduced as PMT Third Party Agreements Manager
4. Mike Zabaneh was introduced as the Civil Design Manager for the Project.
5. Tony Valdez was introduced as part of the Project Construction Management Team.

Project Description

Team informed that Construction Package 1 limits are from Ave 17 within the County of Madera to American Ave within the County of Fresno. Project map was provided that showed project limits, location of grade separations.

Agreement Types

Marvin informed attendees that typically Formal Application is used for new grade separations or viaduct crossings. The GO88-B is typically used to modify an existing crossing. Team was informed that for existing crossings that will be modified, Marvin will inquire if GO88-B can be used contingent that Authority provides a letter that indicates that the proposed grade separations or improvements have an approved environmental document. The following are examples of the different type of crossings that were reviewed and the type of application that would be required.

a) Existing Overhead Crossings: GO88-B may be used contingent that CPUC accepts HSR letter.
b) Existing Under Crossings: GO88-B may be used contingent that CPUC accepts HSR letter.
c) New HSR Crossings: Formal Application
d) Private Crossings/Private Under Crossings: CPUC approval not required
e) Existing at Grade Closures: Form G is to be submitted once closure has been closed
f) Pedestrian Bridge: Formal Application
g) Rail over Rail: Formal Application
h) New Viaduct over local road/street: Formal Application
i) New Viaduct over State Route: Formal Application
j) Temporary Shoofly with Crossings: To be submitted with applicable grade separation application.

Application Process

1. Obtain Railroad and/or local agency concurrence on grade separation design
2. Have site diagnostic meeting
3. GO 88-B or Formal Application is to be submitted after concurrence with applicable parties and site diagnostic meeting.
4. TPZP will prepare, submit grade crossing applications to Authority for review/signature and upon Authority signature, TPZP will submit to CPUC for approval.
5. CPUC Approval
6. Form G (30 days after grade separation completion)
7. It was advised that multiple grade separations submitted in one package may delay CPUC review process. It was suggested that submittals be prioritized.

Schedule

1. TPZP anticipates submitting GO88-B or Formal Applications as early as 2015

Attachment B

PHOTO RELEASE: High-Speed Rail Completes Avenue 17 Grade Separation in Madera County

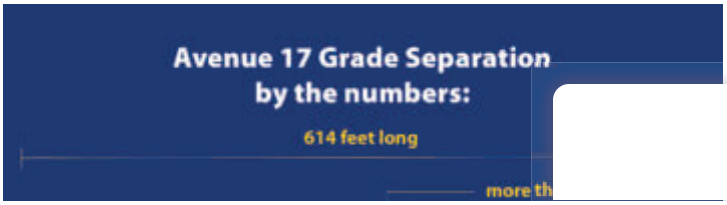
New Structure Boosts Safety and Mobility

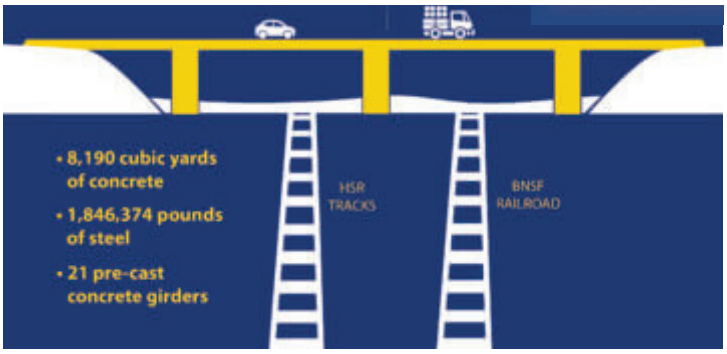
October 30, 2025

WHAT YOU NEED TO KNOW: The Avenue 17 Grade Separation in Madera County is complete and open to traffic. The grade separation, the eighth structure to open to traffic this year, will improve mobility by taking vehicular traffic and pedestrians over the BNSF and future high-speed rail tracks.

MADERA COUNTY, Calif. – The California High-Speed Rail Authority (Authority) today announced the completion of the Avenue 17 Grade Separation project in Madera County. Avenue 17 is the eighth structure to be opened to traffic this year, bringing the total number of structures completed to 57. Once a cul-de-sac ending at the BNSF railroad tracks, the grade separation will now serve as a new through roadway improving east-west mobility for the surrounding community while reducing emergency response times for the area.

Located between Lake Street and Raymond Road, the Avenue 17 grade separation spans 614 feet and is more than 43 feet wide. The grade separation is also built with a pedestrian walkway, taking vehicular traffic and pedestrians over the BNSF and future high-speed rail tracks.





Open above image for larger version.



“This new overhead structure will improve traffic flow also ensuring quicker response times for emergency services. Our goal is to improve safety and make it easier for traffic and pedestrians around the high-speed rail corridor as we advance into the next phase of work, bringing electrified tracks and trains to the Valley.”

Ben Ruiz, Director of Infrastructure Delivery





Open the above images for larger versions.

Construction for the Avenue 17 grade separation began in June 2023. The overcrossing is comprised of 21 pre-cast concrete girders, 8,190 cubic yards of concrete, and 1,846,374 pounds of steel. Construction was overseen by contractor Tutor-Perini/Zachry/Parsons.

Throughout 2025, the Authority has opened and completed several grade separation projects along the Central Valley. Last month, the Avenue 88 grade separation project was completed in Tulare County. In July, the Tulare Street underpass and grade separation was opened to traffic, reconnecting downtown and Fresno's Chinatown. In Madera County, only one grade separation of the initial 119-mile Central Valley segment remains to be completed at Road 26 and is expected to be completed this year.

Grade separations separate vehicles and pedestrians from current freight rail and future high-speed rail operations. They reduce environmental and health impacts from idling vehicles and provide safety and economic benefits for the community.

High-Speed Rail Progress

Work continues daily on the high-speed rail project, with 171 miles currently under design and construction from Merced to Bakersfield. More than 70 miles of guideway are complete, along with 57 structures, with 31 more underway across Madera, Fresno, Kings and Tulare counties.

The project continues to advance statewide, with 463 miles of the 494-mile San Francisco to Los Angeles/Anaheim system fully environmentally cleared and construction ready.

Since construction began, the project has created more than 16,100 good-paying jobs—most filled by Central Valley residents. Up to 1,700 workers report to high-speed rail construction sites each day.

Interviews in Spanish are available upon request. For more information, contact the Authority's media relations office at: news@hsr.ca.gov.

Se ofrecen entrevistas en Español bajo solicitud. Para obtener más información, contacte a la Oficina de Relaciones con los Medios por correo electrónico: news@hsr.ca.gov.

For the latest on high-speed rail construction, visit www.buildhsr.com.

The following link contains recent video, animations, photography, press center resources and latest renderings: https://hsra.box.com/v/ca-hsr-media-resources.

Files are all available for free use, courtesy of the California High-S

Build More, Faster

High-speed rail is a key part of Governor Newsom's Build More, Faster agenda, delivering infrastructure upgrades and creating jobs throughout the state. Discover more: Build.ca.gov



California's 175th Birthday

California, a state of dreamers and doers, has driven profound progress over the last 175 years through its profound resilience, welcoming spirit, and respect for personal freedom.

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